SINGLE BENCH

(4)

P.R. No. 58426
Presented by GVS Singh
dated 18/10/06

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

WRIT PETITION (C) NO. 5820 / 2006

BETWEEN

Smt. Nageshwari Devi W/o Shri Devcharan Bhandekar, aged abut 30 year Sarpanch, Gram Panchayat Nevdha, Tahsil Sigma District Raipur (C.G.)

PETITIONER

AND

1. The State of Chhattisgarh
   Through: The Panchayat Social Welfare Department
   Chhattisgarh, D.K.S. Building, Raipur (C.G.)
2. Prescribed Authority/Additional Collector,
   Tehsil Balodabazar, District Raipur (C.G.)
3. Prescribed Authority/Sub Divisional Officer,
   Tehsil Bhatapara, District Raipur (C.G.)
4. Prescribed Authority/Nyab Tahsildar,
   Tehsil Simga, District Raipur (C.G.)
5. Secretary, Village Panchayat,
   Nevdha, Tehsil Simga, District Raipur (C.G.)
6. Dinesh Kumar Nishad S/o Kashi Ram Kevant aged about 35 year
7. Lalit Kumar S/o Bhagwati Verma aged about 28 year
8. Shiv Prasad S/o Bahadur Verma aged about 28 year
9. Sanat Kumar S/o Bhilau Sahu aged about 35 year

(2)

(5)

10. Smt. Rupa Bai W/o Shambhu Kevant aged about 50 year
11. Smt. Dulari Bai W/o Sevak Ram Yadav aged about 35 year
12. Smt. Gaytri Bai W/o Ram Kumar Sahu aged about 30 year
13. Chinta Ram S/o Motiram Sahu aged about 40 year

All resident at Village Nevadha Thana Nevra Tehsil Simga Dist. Raipur (C.G.)

RESPONDENTS

**WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA**

(36)

**HIGH COURT OF CHHATTISGARH : BILASPUR**

**WRIT PETITION NO. 5820 OF 2006**

**Smt. Nageshwari Devi**

**Versus**

**State of Chhattisgarh and others**

**Order post for 30-10-2006**

**Sd/-**
**Dhirendra Mishra**
**Judge**

(37)

**HIGH COURT OF CHHATTISGARH : BILASPUR**

**WRIT PETITION NO. 5820 OF 2006**

**Smt. Nageshwari Devi**

**Versus**

**State of Chhattisgarh & Others**

---

**Present** :- Smt. Renu Kochar, counsel for the petitioner.

Shri N.K. Agrawal, Dy. Advocate General for the State.

---

**O R D E R**

**Per Shri Dhirendra Mishra, J**

Heard on admission.

2. The petitioner has filed this petition against the impugned order of Annexure-P/1 dated 10-10-2006 passed by the respondent No. 2 whereby the petition under Section 5 of Chhattisgarh Panchayat Raj Adhiniyam (Appeal & Revision ) Rules, 1995 preferred by the petitioner has been dismissed.

3. The petitioner was the elected Sarpanch of Gram Panchayat Nevdha, Block Simga, District Raipur. The meeting of the Panchayat was convened on 18-08-2006 for the purposes of considering no confidence motion against the petitioner and in the said meeting all the 14 panchas including the petitioner participated and a no confidence motion against the petitioner was passed as 11 panchas voted in favour of the motion and only 3 caste

38

their votes against the motion. The petitioner challenged the above resolution of no confidence passed by the panchas before respondent No.2 on the ground that the Sub Divisional Officer issued notice pertaining to the meeting of the Panchayat for the purposes of considering no confidence motion, however, the copy of charges/ complaint of the panchas was not supplied to the petitioner. The above notice was also not served upon the petitioner before seven days which vitiates the total proceeding of the no confidence motion. It was also contended that the petitioner was not afforded an opportunity to put up her case in the meeting and the whole proceeding was malafidely initiated at the instance of Panchayat Sachiv and Up-Sarpanch. Her objections were ignored and no confidence motion was passed. The respondent No.2 – the Prescribed Authority after perusing the original record and hearing the respective parties dismissed the petition with a finding that 10 panchas of the Gram Panchayat had given notice to the Prescribed Authority for tabling the no confidence motion against the petitioner and thereafter the Prescribed Authority appointed Presiding Officer and issued notice to the members of the Panchayat in accordance with law. This notice was issued on 03-08-2006 for the meeting dated 18-08-2006, as per the requirement of Section 21 of the Adhiniyam and accordingly the petition was dismissed.

(39)

4. Learned counsel for the petitioner submits that the meeting of the Panchayat to consider the no confidence motion was illegal. The same was convened in contravention of Sub-rule (3) of Rule 3 of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (hereinafter referred to as "the Rules"). There is no evidence to show that notice was despatched before seven days. It is further argued that the notice did not mention the specific charges against the petitioner and the petitioner was not even afforded an opportunity to make her submission in the meeting. Placing reliance upon the Judgment in the matter of Somvati Soni Vs. Gram Panchayat, Padwar & others, reported in 2000 (1) M.P.L.J. 173, it is argued that Sub-rule (3) of Rule 3 of the Rules contemplates that the notice of the meeting should also specify the purpose for which the meeting is convened and it was incumbent upon the Prescribed Authority – Sub Divisional Officer to enclose the motion of no confidence along with the notice. Further relying upon the Judgment in the matter of Jugraj Singh Markam Vs. Bhannulal Maravi & others, reported in 2003 (4) M.P.L.J.378, it is submitted that though the receipt of notice before seven days is not necessary but the Prescribed Authority is required to

despatch the notice before seven clear days which is mandatory.

5. I have heard the learned counsel for the petitioner. I have perused the impugned order as also the documents annexed with this petition.

6. It is not in dispute that the no confidence motion against the petitioner was passed with the requisite majority as per Section 21 of the Adhiniyam. The only objection of the petitioner against passing of such resolution is that the notice of the no confidence motion was not despatched before seven clear days from the date of meeting and the same is in violation of the mandatory provisions of sub-rule (3) of Rule 3 of the Rules. So far as the other ground i.e the notice did not mention the purpose for which the meeting was convened is concerned, a bare perusal of the notice of Annexure-P/3 goes to show that respondent No.3 – Prescribed Authority vide memo dated 03-08-2006 issued to the members of the Gram Panchayat had informed that the meeting of the Gram Panchayat shall be convened at 1.00 p.m. on 18-08-2006 in Gram Panchayat Bhawan Nevdha for considering the no confidence motion against the Sarpanch. The other objection that the petitioner was not afforded an opportunity to put up her view point in the meeting is concerned, the above objection is not made out in view of the resolution of Annexure P/2 wherein it is

(91)

mentioned that the petitioner participated in the meeting and denied the allegations levelled against her.

7. Sub-rule (3) of Rule 3 of the Rules is quoted below :

> "3 (3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to section 21 (3), 28(3) and 35(3), as the case may be. On being thus satisfied he shall fix the date, time and place for the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be despatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janpad or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting."

8. In the matter of Jugraj Singh Markam (Supra) while considering Rule 3(3) of the Rules it has been held that word "despatched" used in this rule is analogous to the word "issued" and thus issuance or despatch of the notice is sufficient and receipt of the notice before seven days is not necessary.

9. In the matter of Mahesh Prasad Chaudhari Vs. State of M.P. & others, reported in 1997 (2) JLJ 397, while dealing with non-compliance of Rule 3(3) of the Rules, it has been held that where the petitioner participated in a meeting of no confidence motion the petitioner is not entitled to raise such an objection after passing of the no confidence motion.

(42)

10. A Full Bench of High Court of Madhya Pradesh in the matter of Bhulin Dewangan Vs. State of M.P. & others, reported in 2001 (2) M.P.L.J. 372 approving the aforesaid view of the learned Single Judge has held thus:

> "The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. "

11. In the instant case, the petitioner after receiving the notice participated in the meeting of the Gram Panchayat held for considering no confidence motion against her without raising any objection with respect to defect in the notice and thereafter the resolution of no confidence was passed with a majority of 11 votes. She was afforded an opportunity to put up her view point in the meeting and thereafter the motion was passed. Therefore, this Court is of the considered opinion that no prejudice is caused to the petitioner by the defect, if any, in the despatch of the notice.

12. Consequently, the petition is devoid of substance and the same is liable for dismissal and is accordingly dismissed.

**Sd/-**
**Dhirendra Mishra**
**Judge**

30-10-2006